



Constitutional Policing Update

Can Police Search a Vehicle When Loose Marijuana is in Plain View During a Traffic Stop?

What happened in the case?

On November 5, 2021, around 4:30 p.m., defendant Sellers was seated in the front passenger seat of a vehicle stopped by police for a minor traffic violation (Veh. Code § 22450 [limit line violation]). Aside from the traffic violation, there was nothing suspicious about the vehicle.

During the stop, the driver was sweating and both defendant and the driver appeared slightly nervous. The first Officer requested a driver's license and asked if there was any marijuana or anything illegal in the vehicle. The driver said no. However, the Officer could see in the back of the vehicle a tray commonly used for rolling marijuana cigarettes, covered in a sticky residue consistent with marijuana. Another Officer used his flashlight to illuminate the rear floorboard and saw "crumbs" of green, loose-leaf marijuana scattered, as well as "somewhat larger" "round circular nuggets" of marijuana under the front passenger seat. Despite the driver's denial of any marijuana in the vehicle, officers found 0.36 grams of loose marijuana and a firearm under the passenger seat. Sellers was charged with unlawful possession of a firearm.

The lower court denied the Motion to Suppress, reasoning that the loose marijuana constituted contraband under Vehicle Code section 23222, subdivision (b). Sellers renewed the suppression motion under Penal Code section 995, which was also denied. Sellers then appealed again arguing the search lacked probable cause.

What did the California Court of Appeal Find?

The search of the vehicle was lawful. The court concluded that the search was supported by probable cause. It held that the loose marijuana, although lawful in amount, was contraband because it was not in a closed container, violating section 11362.3, subdivision (a)(4) (it is unlawful to "[p]ossess an open container or open package of cannabis ... while driving, operating, or riding in the passenger seat or compartment of a motor vehicle ...").

The court also found that the totality of circumstances, including the suspects' nervousness, false statements, a usable amount of loose marijuana scattered throughout the vehicle, and the presence of a marijuana rolling tray, provided probable cause for the search. *Sellers v. Superior Court (Sacramento)*, (#C100036, Cal. Ct. of Appeal, Third District) Aug. 22, 2024.

What does this mean for you?

The Fourth Amendment is highly fact-specific. The more a deputy's report articulates the specific facts and circumstances justifying their reasonable suspicion and, ultimately, probable cause to search, the more likely the criminals will be held accountable.

